

**DOCKETED**

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## **Amendments to Regulations Specifying Enforcement Procedures**

*Additional submitted attachment is included below.*

**STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the matter of:	)	
	)	
	)	Docket No. 16-RPS-03
Amendments to Regulations Specifying	)	
Enforcement Procedures for the Renewables	)	
Portfolio Standard for Local Publicly Owned	)	
Electric Utilities	)	
	)	

**COMMENTS OF THE UTILITY REFORM NETWORK  
ON THE PROPOSED IMPLEMENTATION OF LONG-TERM CONTRACTING  
REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD  
FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES**

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ON THE PROPOSED IMPLEMENTATION OF LONG-TERM CONTRACTING  
REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD  
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In response to the October 30, 2020 Notice of Lead Commissioner Workshop, The Utility Reform Network (TURN) submits these comments on proposed modifications to the Renewables Portfolio Standard (RPS) enforcement regulations for local Publicly Owned Utilities (POUs). TURN previously provided written comments on the staff implementation proposal, the draft amendments, the proposed regulations, the first 15-day language modification and the second 15-day language modification. TURN also participated at the November 5, 2020 workshop.

**I. Introduction**

The long-term contracting requirement is a key element of compliance with the RPS program under the statutory revisions enacted in SB 350 (DeLeón, 2015). The requirement reflects the critical importance of long-term contracting to the development of sufficient new RPS generating resources to meet the ambitious post-2020 targets.<sup>1</sup> The purpose of the long-term contracting requirement is to promote market stability, ensure advance planning and drive the timely development of new resource capacity.

In light of concerns about the potential implementation challenges associated with certain provisions in the second 15-day language, TURN worked closely with POU representatives to develop a joint stakeholder proposal that would provide more up-front clarity with respect to the specific standards and process used to determine compliance with the long-term contracting requirement.<sup>2</sup> This proposal represents a

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<sup>1</sup> The California Public Utilities Commission has repeatedly recognized the fact that a long-term contract is essential for a project developer to finance construction of new renewable generation. *See* D.17-06-026, page 15 (“in D.06-10-019 and D.07-05-028, the Commission adopted the parties’ consensus that long-term contracts are necessary in order for developers to finance new and repowered RPS-eligible generation.”)

<sup>2</sup> Joint Stakeholder Proposal on Implementation of Long Term Procurement Requirement, Docket 16-RPS-03, filed October 20, 2020.

compromise of positions between TURN and the POU representatives (NCPA/SCPPA/CMUA) and provides a set of conforming amendments to the second 15-day language.

While the October 30<sup>th</sup> modifications to the draft regulations proposed by Staff incorporate the key elements of the joint stakeholder proposal, a small number of issues require further refinement prior to the issuance of the next 15-day language. TURN identifies these issues in the following sections.

## **II. Threshold for determination of “Reasonably Consistent” quantities**

Consistent with the construct proposed by the Joint Stakeholders, the Staff proposal would require POUs to demonstrate that a long-term procurement commitment includes “reasonably consistent” quantities for a duration of at least 10 years. Absent such a demonstration, a POU would need to provide other enumerated justifications to support a long-term classification. The “reasonably consistent” threshold should therefore be understood as a safe harbor that exempts a POU from being required to provide any additional information to support the reasonableness of larger annual deviations.

While the Joint Stakeholders could not reach agreement on a specific quantitative threshold, the Staff proposal offers two alternatives – Option A ( $\leq 33\%$  annual variance relative to long-term average) or Option B ( $\leq 40\%$  annual variance relative to long-term average).<sup>3</sup> Option A would exempt POUs that are not obligated to file Integrated Resource Plans pursuant to Public Utilities Code §9621 while Option B would apply the requirement to all POUs.

TURN could support either Option A or B. As a general matter, TURN prefers applying the same requirements to all obligated entities regardless of size. However, TURN recognizes that there are some unique challenges facing very small POUs especially those with a significant proportion of retail sales attributable to a few large

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<sup>3</sup> Proposed Section 3204(d)(2)(C)(1).

customers. To the extent that the Commission finds that it can distinguish the compliance obligation based on IRP filing status, TURN can support Option A.

The Staff proposes a different quantitative threshold for procurement of unbundled Renewable Energy Credits (Product Content Category 3). Under the proposed language, any long-term contract could vary by up to 33% “between any two adjacent compliance periods” and remain eligible for safe harbor treatment.<sup>4</sup> No such provision was included in the Joint Stakeholder proposal and TURN does not see a valid legal or policy justification for this differential treatment.

Moreover, the proposal would apply the 33% to differences between compliance periods rather to variances occurring in individual years. As a result, the proposed language could grant long-term contract status to a PCC3 commitment that is extremely ‘lumpy’ and includes a series of years with *de minimus* quantities. For example, the staff proposal could allow the following PCC3 contract to qualify as long-term:<sup>5</sup>

Contract year	Annual Quantity	Compliance period	Average Quantity
1	100	1	26
2	1		
3	1		
4	1		
5	50	2	17
6	1		
7	1		
8	33	3	12
9	1		
10	1		

The Commission should decline to permit any contract with massive annual deviations to be granted safe harbor treatment. The best way to prevent such a

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<sup>4</sup> Proposed Section 3204(d)(2)(C)(1)(ii).

<sup>5</sup> This contract structure would result in 33% deviations in average quantities between compliance periods.

problematic outcome is to delete the proposed preferential treatment for PCC3 products.

### **III. Justifications for long-term contracts that do not include “reasonably consistent” quantities**

The Joint Stakeholder proposal urges the Commission to adopt a “bright-line threshold for determining when annual deliveries under a contract constitutes a substantial deviation.”<sup>6</sup> If annual deviations under the procurement commitment exceed the “bright-line” threshold, the Joint Stakeholders propose that POUs be permitted to make a showing that the contract satisfies one of the specific justifications outlined in the regulations. The Staff Proposal is comparable to the Joint Stakeholder proposal except that it appears to require the POU to show that a contract that does not include “reasonably consistent” quantities satisfies both an specific allowable justification and independently demonstrates consistency “with the purposes of the long-term procurement requirement”.<sup>7</sup>

The Commission should clarify that a POU may demonstrate that the contract is consistent with the purposes of the long-term contract requirement if it satisfies one of the identified justifications. The following edit should accomplish this result:

Notwithstanding subparagraphs i.-ii., reasonably consistent contracted-for quantities include procurement quantities that vary by more than 33 percent, or procurement quantities specified on a compliance period basis, if the POU demonstrates the contract represents a procurement commitment consistent with the purposes of the long-term procurement requirement, including supporting long-term planning and market stability, and investments in the development of new eligible renewable energy resources or improvements to existing eligible renewable energy resources. ~~In making~~ This demonstration shall be satisfied if a POU may provide information to show shows that the contracted-for procurement quantities are associated with one of the following:

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<sup>6</sup> Joint Stakeholder Proposal on Implementation of Long Term Procurement Requirement, Docket 16-RPS-03, filed October 20, 2020, page 6.

<sup>7</sup> Proposed Section 3204(d)(2)(C)(1)(iv).

TURN urges the Commission to incorporate this clarification to the staff proposal in order to conform to the proposal offered by the Joint Stakeholders.

#### **IV. Duration of voluntary advance review process**

The Joint Stakeholders proposed a voluntary advance review process that would allow a POU to seek up-front certification for the eligibility of a pending (or recently executed) commitment to satisfy the long-term contract requirement.<sup>8</sup> This proposal is designed to reduce uncertainty for POUs entering into long-term commitments that entail substantial costs especially in cases where the commitment has features that may deviate from the safe harbor protections relating to reasonably consistent quantities. The proposal included in the Joint Stakeholder comments is similar to a concept suggested in TURN's prior written comments.

TURN appreciates the inclusion of this concept in the Staff proposal but strongly urges a shorter timeline for review. Instead of the 180 days included in the staff proposal, TURN recommends restoring the 60-day timeline proposed by the Joint Stakeholders. This shorter timeline is needed to ensure that POU contract execution is not substantially delayed due to the failure of the Commission to perform a prompt review. Absent a shorter review period, TURN fears that POUs will decline to utilize the advanced voluntary review option.

While TURN recognizes the limitations on Commission staff resources, a more expedited process is necessary to reflect commercial realities. In particular, TURN believes that an expedited timeline should be feasible for contracts that do not require enhanced scrutiny by Commission because they do not differ materially from other non-grandfathered contracts receiving a long-term contract compliance designation. The Commission should consider a process that prioritizes the review of more conventional commitments to the extent possible.

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<sup>8</sup> Joint Stakeholder Proposal on Implementation of Long Term Procurement Requirement, Docket 16-RPS-03, filed October 20, 2020, pages 9-10.



## V. Use of replacement energy

The Joint Stakeholders urged a small change to Section 3204(d)(2)(K) governing the treatment of replacement energy allowed under the original long-term contract. The change would allow such substitution if the RPS-certified facility specified in the original contract “did not perform as the contract required.”<sup>9</sup> The Staff Proposal incorporates this change. TURN continues to support this revised language. The change should be understood to encompass situations where the RPS-certified facility in the contract did not perform, nonperformance was not anticipated by the buyer, and the output from the RPS certified facility was not resold to another buyer. In particular, this language should not permit sellers to substitute replacement energy in order to resell the facility output to another entity. TURN does not intend for this language to serve as *carte blanche* for unlimited substitution based on the whims of the seller but rather should protect buyers in the event that there are legitimate challenges to obtaining delivery from contracted resources.

## VI. Excess generation

The Staff Proposal slightly modifies Section 3204(d)(2)(G) to clarify that excess generation beyond the quantities a POU is obligated to procure under a long-term contract shall be treated as short-term. While agreeing with the intent of this provision, TURN urges the Commission to consider a revision proposed by the POUs that would treat excess quantities as a “new agreement for the increased quantities or allocation of generation” that would be separately subjected to the other applicable requirements in order to be eligible for long-term credit.<sup>10</sup>

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<sup>9</sup> Joint Stakeholder Proposal on Implementation of Long Term Procurement Requirement, Docket 16-RPS-03, filed October 20, 2020, page 16.

<sup>10</sup> This revision will be proposed by the other Joint Parties in written comments.

## VII. Conclusion

TURN appreciates the continuing efforts of Commission staff to finalize proposed regulations that implement reasonable and effective enforcement rules for key elements of SB 350 including the long-term contract requirement.

Respectfully submitted,

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